

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN ELECTRONIC DIGITAL
MEDIA DEVICES AND COMPONENTS
THEREOF**

Investigation No. 337-TA-796

**NOTICE OF COMMISSION'S FINAL DETERMINATION FINDING A VIOLATION
OF SECTION 337; ISSUANCE OF A LIMITED EXCLUSION ORDER AND CEASE
AND DESIST ORDERS; TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in this investigation and has issued a limited exclusion order prohibiting respondents Samsung Electronics Co, Ltd. of the Republic of Korea ("SEC"); Samsung Electronics America, Inc. of Ridgefield Park, New Jersey ("SEA"); and Samsung Telecommunications America, LLC of Richardson, Texas ("STA") (collectively, "Samsung"), from importing certain electronic digital media devices that infringe one or more of claims 1, 4-6, 10, and 17-20 of U.S. Patent No. 7,479,949 ("the '949 patent") and claims 1-4 and 8 of U.S. Patent No. 7,912,501 ("the '501 patent"). The Commission has also issued cease and desist orders prohibiting SEA and STA from further importing, selling, and distributing articles that infringe one or more of claims 1, 4-6, 10, and 17-20 of the '949 patent and claims 1-4 and 8 of the '501 patent in the United States. The Commission has found no violation based on U.S. Patent Nos. D618,678 ("the D'678 patent"); D558,757 ("the D'757 patent"); RE 41,922 ("the '922 patent"); and 7,789,697 ("the '697 patent"). The Commission's determination is final, and the investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 5, 2011, based on a complaint filed by Apple Inc. (“Apple”) of Cupertino, California. 76 *Fed. Reg.* 47610 (Aug. 5, 2011). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic digital media devices and components thereof by reason of infringement of certain claims of the ’949, the ’922, the ’697, the ’501, the D’757, and the D’678 patents, and U.S. Patent No. 7,863,533 (“the ’533 patent”). Samsung was named as a respondent in the Commission’s notice of investigation. A Commission investigative attorney (“IA”) participated in the investigation.

On May 3, 2012, the presiding administrative law judge (“ALJ”) issued an initial determination (“ID”) partially terminating the investigation with respect to all claims of the ’533 patent; claims 1-3, 11, 12, 15, 16 and 21-27 of the ’697 patent; and claim 3 of the ’949 patent (Order No. 17) (not reviewed by the Commission, May 3, 2012).

On October 24, 2012, the ALJ issued his final ID in this investigation finding a violation of section 337 in connection with the claim of the D’678 patent; claims 1, 4-6 and 10-20 of the ’949 patent; claims 29, 30 and 33-35 of the ’922 patent; and claims 1-4 and 8 of the ’501 patent. The ALJ found no violation of section 337 in connection with the claim of the D’757 patent; claims 31 and 32 of the ’922 patent; and claims 13 and 14 of the ’697 patent. The ALJ also found that the asserted claims were not shown to be invalid. The ALJ further found that a domestic industry in the United States exists that practices the ’949, the ’922, the ’501, the D’757, and the D’678 patents, but not the ’697 patent. On November 7, 2012, the ALJ issued his recommended determination on remedy and bonding.

Apple and Samsung filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions. The IA filed only a response to the petitions for review. On December 3, 2012, Apple and Samsung filed public interest comments pursuant to Commission rule 210.50(a)(4). That same day, non-party Google filed a submission in response to the Notice of Request for Statements on the Public Interest. *See 77 Fed. Reg.* 68829-30 (Nov. 16, 2012).

On January 23, 2013, the Commission determined to review the final ID in its entirety, and remand the investigation to the ALJ with respect to certain issues related to the ’922 patent and the ’501 patent, as set forth in the Remand Order. 78 *Fed. Reg.* 6130 (Jan. 29, 2013).

On March 26, 2013, the ALJ issued his remand initial determination (“RID”). The RID found that claims 34 and 35 of the ’922 patent are infringed by the text-selection feature of the accused products and that claim 3 of the ’501 patent is not infringed by the accused products represented by the Transform SPH-M920. On April 9, 2013, Apple and Samsung petitioned for review of the RID. The IA did not petition for review of the RID. On April 17, 2013, Apple, Samsung and the IA filed their respective responses to the petitions for review.

On May 28, 2013, the Commission determined to review the RID in its entirety. In connection with the Commission's review of the final ID and the RID, the parties were invited to brief certain issues, including issues related to remedy and the public interest. The Commission received responses from Apple, Samsung, and the IA addressing all of the Commission's questions. In response to the remedy and public interest questions posed to the public, the Commission received responses from the following: Americans for Job Security; Associated Carrier Group; Capital Policy Analytics; Congresswoman Eva M. Clayton; Congressmen Hakeem S. Jeffries and Henry C. Johnson, Jr.; Congressmen Bill Pascrell, Jr., Hank Johnson, Albio Sires, Dan Maffei, Terri Sewell, and Steve Israel; Congressman Pete Sessions; CTIA – The Wireless Association; Mr. Dennis C. Vacco, Esq.; Digital Liberty and Property Rights Alliance; Google, Inc.; Health IT Now.org; Hispanic Leadership Fund; Homecare Homebase, LLC; Institute for Policy Innovation; James Valley Telecommunications; Texas State Senator Ken Paxton; Texas State Senator Kirk Watson; The LIBRE Initiative; National Black Chamber of Commerce; National Grange of the Order of Patrons of Husbandry (“National Grange”); The Newborn Coalition; Revol Wireless; Senator Robert Menendez; Sprint Spectrum, L.P.; Taxpayers Protection Alliance; Ting Wireless; Congressman Trent Franks; American Agri-Women *et al.*; and United States Cellular Corporation.

Having examined the record of this investigation, including the ALJ's final ID, RID and submissions from the parties, the Commission has determined that Apple has proven a violation of section 337 based on articles that infringe claims 1, 4-6, 10, and 17-20 of the '949 patent and claims 1-4 and 8 of the '501 patent. Specifically, with respect to the '949 patent, the Commission has determined to affirm the ALJ's constructions of disputed claim terms and his conclusion that Apple has proven a violation of section 337 based on articles that infringe claims 1, 4-6, 10, and 17-20 of the '949 patent. The Commission affirms, with modified reasoning, the ALJ's conclusion that Apple failed to prove that Samsung contributorily infringes claims 11-16 of the '949 patent. The Commission, however, has determined to reverse the ALJ's conclusion that Apple has proven that Samsung induced infringement of claims 11-16 of the '949 patent. With some modifications to the ALJ's analysis, the Commission has also determined that the record supports the ALJ's conclusions that the Continuum SCH-1400 infringes all of the asserted claims of the '501 patent; that the accused Samsung devices represented by Transform SPH-M920 infringe claims 1-2 and 8, but not claims 3 and 4 of the '501 patent; and that the accused Samsung devices represented by Galaxy Tab 7.0 and Galaxy S II do not infringe any of the asserted claims of the '501 patent. The Commission has further determined that the asserted claims of the '949 and the '501 patents have not been proven by Samsung to be invalid and that Apple has proven that a domestic industry exists in the United States relating to articles protected by the '949 and the '501 patents.

In addition, the Commission has determined that Apple has not proven a violation based on alleged infringement of the D'678, the D'757, the '922, and the '697 patents. Specifically, the Commission has determined that the asserted claim of the D'678 patent is valid but not infringed, and that Apple's iPhone, iPhone 4 and iPhone 4S practice the D'678 patent, but not the iPhone 3G and iPhone 3GS. The Commission has also determined that the asserted claim of the D'757 patent is valid but not infringed, and Apple's iPhone 3G and 3GS do not practice the D'757 patent. With some modifications to the ALJ's analysis for the '922 patent, the

Commission has determined to affirm the ALJ's constructions of disputed claim terms, and the ALJ's conclusion that Apple failed to prove that Samsung contributorily infringes the asserted claims of the '922 patent. The Commission, however, has determined to reverse the ALJ's conclusion that Apple has proven that Samsung induced infringement of the asserted claims of the '922 patent. With respect to the '697 patent, the Commission has determined to modify the ALJ's construction and application of certain disputed terms in the asserted claims. Under the modified constructions, the Commission has determined that Apple has proven that the accused Samsung devices infringe the asserted claims of the '697 patent and that Apple's domestic industry products practice the '697 patent. The Commission, however, ultimately finds that Apple has not proven a violation of section 337 with respect to the '697 patent because Samsung has proven with clear and convincing evidence that the asserted claims are invalid as anticipated by the YP-T7J media player. The Commission has further determined that Apple has proven a domestic industry exists in the United States relating to articles protected by the D'678, the '922 and the '697 patents, but not the D'757 patent.

The Commission has determined that the appropriate remedy is a limited exclusion order prohibiting Samsung from importing certain electronic digital media devices that infringe one or more of claims 1, 4-6, 10, and 17-20 of the '949 patent and claims 1-4 and 8 of the '501 patent. The Commission has also determined to issue cease and desist orders prohibiting SEA and STA from further importing, selling, and distributing articles that infringe one or more of claims 1, 4-6, 10, and 17-20 of the '949 patent and claims 1-4 and 8 of the '501 patent in the United States. The orders do not apply to the adjudicated design around products found not to infringe the asserted claims of the '949 and the '501 patents as identified in the final ID. The Commission has carefully considered the submissions of the parties and the public and has determined that the public interest factors enumerated in section 337(d)(1) and (f)(1) do not preclude issuance of the limited exclusion order and cease and desist orders.

Finally, the Commission has determined that excluded mobile phones, media players, and tablet computers may be imported and sold in the United States during the period of Presidential review (19 U.S.C. § 1337(j)) with the posting of a bond in the amount of 1.25 percent of the entered value. The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: August 9, 2013

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN ELECTRONIC DIGITAL
MEDIA DEVICES AND COMPONENTS
THEREOF**

Investigation No. 337-TA-796

LIMITED EXCLUSION ORDER

The Commission has determined that there is a violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the unlawful importation, sale for importation, and sale after importation by Respondents Samsung Electronics Co., Ltd., Samsung Electronics America, Inc. and Samsung Telecommunications America, LLC, of certain electronic digital media devices covered by one or more of claims 1, 4-6, 10, and 17-20 of U.S. Patent No. 7,479,949 (“the ’949 patent”) and claims 1-4 and 8 of U.S. Patent No. 7,912,501 (“the ’501 patent”).

Having reviewed the record of this investigation, including the written submissions of the parties and the public, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of covered electronic digital media devices manufactured for or on behalf of Respondents or any of their affiliated companies, parents, subsidiaries, licensees, or other related business entities, or their successors or assigns.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude the issuance of the limited exclusion order, and that the bond during the Presidential review period shall be in the amount of 1.25 percent of entered

value for covered mobile phones, media players, and tablet computers, and without bond for any other covered products.

Accordingly, the Commission hereby **ORDERS** that:

1. Electronic digital media devices covered by one or more of claims 1, 4-6, 10 and 17-20 of the '949 patent and claims 1-4 and 8 of the '501 patent, and that are manufactured abroad by or on behalf of, or imported by or on behalf of, Respondents or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, for the remaining terms of the patents, except under license of the patent owner or as provided by law, and except for refurbished articles imported on or before August 31, 2015, for use as a replacement for an identical article that was imported prior to the date of this Order.
2. Notwithstanding paragraph 1 of this Order, the aforesaid electronic digital media devices are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption under bond in the amount of 1.25 percent of entered value for covered mobile phones, media players, and tablet computers, and without bond for any other covered products, pursuant to subsection (j) of Section 337 (19 U.S.C. § 1337(j)) and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43,251), from the day after this Order is received by the United States Trade Representative until such time as

the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty days after the date of receipt of this Order.

3. At the discretion of U.S. Customs and Border Protection (“CBP”) and pursuant to procedures that it establishes, persons seeking to import electronic digital media devices that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.
4. The provisions of this Order shall not apply to the following design around electronic digital media devices and any electronic digital media devices incorporating the design arounds found to be non-infringing as detailed in the Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond at pages 11 and 163: Galaxy Tab GT-P7500, Galaxy Tab 10.1 SCH-I905 (modified), Indulge SCH-R915, Epic 4G SPH-D700, Replenish SPH-M580, Galaxy Prevail SPH-M820, Galaxy Attain 4G SCH-R920, Galaxy S II Skyrocket SCH-I727, Galaxy S II SGH-I777, Captivate

Glide SGH-I927, Galaxy S II Epic 4G Touch SPH-D710, Droid Charge SCH-I510, Galaxy Note SCH-I717.¹

5. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to electronic digital media devices imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.
6. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).
7. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and CBP.
8. Notice of this Order shall be published in the *Federal Register*.

By order of the Commission.



Lisa R. Barton

Acting Secretary to the Commission

Issued: August 9, 2013

¹ These design around products for the '949 and the '501 patents are identified on pages 11 and 12 of the Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ELECTRONIC DIGITAL
MEDIA DEVICES AND COMPONENTS
THEREOF**

Investigation No. 337-TA-796

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Samsung Electronics America, Inc., 85 Challenger Road, Ridgefield Park, NJ 07660, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for, electronic digital media devices covered by one or more of claims 1, 4-6, 10 and 17-20 of U.S. Patent No. 7,479,949 (“the ’949 patent”) and claims 1-4 and 8 of U.S. Patent No. 7,912,501 (“the ’501 patent”), in violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I.

Definitions

As used in this order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Apple, Inc., 1 Infinite Loop, Cupertino, CA 95014.
- (C) “Respondent” shall mean Samsung Electronics America, Inc., 85 Challenger Road, Ridgefield Park, NJ 07660.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.

- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean electronic digital media devices covered by one or more of claims 1, 4-6, 10, and 17-20 of the ’949 patent and claims 1-4 and 8 of the ’501 patent. Covered products shall not include the following design around electronic digital media devices and any electronic digital media devices incorporating the design arounds found to be non-infringing as detailed in the Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond at pages 11 and 163: Galaxy Tab GT-P7500, Galaxy Tab 10.1 SCH-I905 (modified), Indulge SCH-R915, Epic 4G SPH-D700, Replenish SPH-M580, Galaxy Prevail SPH-M820, Galaxy Attain 4G SCH-R920, Galaxy S II Skyrocket SCH-I727, Galaxy S II SGH-I777, Captivate Glide SGH-I927, Galaxy S II Epic 4G Touch SPH-D710, Droid Charge SCH-I510, Galaxy Note SCH-I717.¹ Covered products shall also not include articles for which a provision of law or license avoids liability for the infringement of the claims listed above.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled

¹ These design around products for the ’949 and the ’501 patents are identified on pages 11 and 12 of the Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond.

(whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order.

For the remaining term of the relevant '949 or '501 patent, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, Respondent shall be permitted:

- A. On or before August 31, 2015, to distribute refurbished covered articles for use as a replacement for an identical covered article that was imported prior to the date of this Order;
- B. To engage in specific conduct otherwise prohibited by the terms of this Order if, in a written instrument, the owner of the '949 and '501 patents licenses or authorizes such specific conduct; or

C. To engage in specific conduct otherwise prohibited by the terms of this Order if such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this requirement, the reporting periods shall commence on February 1 of each year and shall end on the subsequent January 31. The first report required under this section shall cover the period from the date of issuance of this order through January 31, 2014. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that it has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-796") in a prominent place on the cover pages and/or the first page. (*See Handbook for Electronic Filing Procedures*, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in

confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainants' counsel.²

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI.

Record-Keeping and Inspection

- (A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

² Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this Order. The designated attorney must be on the protective order entered in the investigation.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

- (A) Serve, within fifteen days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration dates of the '949 and '501 patents.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to section VI of this order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for

civil penalties under section 337(f) of the Tariff Act of 1930 (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

X.

Modification

The Commission may amend this order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI.

Bonding

The conduct prohibited by section III of this order may be continued during the sixty-day period in which this Order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondent posting a bond in the amount of 1.25 percent of entered value for covered mobile phones, media players, and tablet computers, and without bond for any other covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. (*See* 19 C.F.R. § 210.68.) The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement

of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainant's counsel.³

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to a Respondent on appeal, or unless Respondent exports or destroys the products subject to this bond and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton", with a stylized flourish at the end.

Lisa R. Barton
Acting Secretary to the Commission

Issued: August 9, 2013

³ See Footnote 2.

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN ELECTRONIC DIGITAL
MEDIA DEVICES AND COMPONENTS
THEREOF**

Investigation No. 337-TA-796

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Samsung Telecommunications America, LLC, 1301 East Lookout Drive, Richardson, TX 75082, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for, electronic digital media devices covered by one or more of claims 1, 4-6, 10 and 17-20 of U.S. Patent No. 7,479,949 (“the ’949 patent”) and claims 1-4 and 8 of U.S. Patent No. 7,912,501 (“the ’501 patent”), in violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I.

Definitions

As used in this order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Apple, Inc., 1 Infinite Loop, Cupertino, CA 95014.
- (C) “Respondent” shall mean Samsung Telecommunications America, LLC, 1301 East Lookout Drive, Richardson, TX 75082.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.

- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean electronic digital media devices covered by one or more of claims 1, 4-6, 10, and 17-20 of the ’949 patent and claims 1-4 and 8 of the ’501 patent. Covered products shall not include the following design around electronic digital media devices and any electronic digital media devices incorporating the design arounds found to be non-infringing as detailed in the Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond at pages 11 and 163: Galaxy Tab GT-P7500, Galaxy Tab 10.1 SCH-I905 (modified), Indulge SCH-R915, Epic 4G SPH-D700, Replenish SPH-M580, Galaxy Prevail SPH-M820, Galaxy Attain 4G SCH-R920, Galaxy S II Skyrocket SCH-I727, Galaxy S II SGH-I777, Captivate Glide SGH-I927, Galaxy S II Epic 4G Touch SPH-D710, Droid Charge SCH-I510, Galaxy Note SCH-I717.¹ Covered products shall also not include articles for which a provision of law or license avoids liability for the infringement of the claims listed above.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled

¹ These design around products for the ’949 and the ’501 patents are identified on pages 11 and 12 of the Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond.

(whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order.

For the remaining term of the relevant '949 or '501 patent, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, Respondent shall be permitted:

- A. On or before August 31, 2015, to distribute refurbished covered articles for use as a replacement for an identical covered article that was imported prior to the date of this Order;
- B. To engage in specific conduct otherwise prohibited by the terms of this Order if, in a written instrument, the owner of the '949 and '501 patents licenses or authorizes such specific conduct; or

C. To engage in specific conduct otherwise prohibited by the terms of this Order if such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this requirement, the reporting periods shall commence on February 1 of each year and shall end on the subsequent January 31. The first report required under this section shall cover the period from the date of issuance of this order through January 31, 2014. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that it has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-796") in a prominent place on the cover pages and/or the first page. (*See Handbook for Electronic Filing Procedures*, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in

confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainants' counsel.²

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI.

Record-Keeping and Inspection

- (A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

² Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this Order. The designated attorney must be on the protective order entered in the investigation.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

- (A) Serve, within fifteen days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration dates of the '949 and '501 patents.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to section VI of this order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for

civil penalties under section 337(f) of the Tariff Act of 1930 (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

X.

Modification

The Commission may amend this order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI.

Bonding

The conduct prohibited by section III of this order may be continued during the sixty-day period in which this Order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondent posting a bond in the amount of 1.25 percent of entered value for covered mobile phones, media players, and tablet computers, and without bond for any other covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. (*See* 19 C.F.R. § 210.68.) The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement

of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainant's counsel.³

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to a Respondent on appeal, or unless Respondent exports or destroys the products subject to this bond and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Acting Secretary to the Commission

Issued: August 9, 2013

³ See Footnote 2.

**CERTAIN ELECTRONIC DIGITAL MEDIA DEVICES AND 337-TA-796
COMPONENTS THEREOF**

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION NOTICE** has been served by hand upon the Commission Investigative Attorney, **David O. Lloyd, Esq.**, and the following parties as indicated, on **August 9, 2013**.



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

ON BEHALF OF COMPLAINANT APPLE INC.:

Alexander J. Hadjis, Esq.
MORRISON & FOERSTER LLP
2000 Pennsylvania Ave., NW, Suite 6000
Washington, DC 20006

() Via Hand Delivery
(☒) Via Express Mail
() Via First Class Mail
() Other:

**ON BEHALF OF RESPONDENTS SAMSUNG
ELECTRONICS CO., LTD., SAMSUNG
ELECTRONICS AMERICA, INC. AND SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC:**

S. Alex Lasher, Esq.
**QUINN EMMANUEL URQUHART
& SULLIVAN, LLP**
1299 Pennsylvania Ave., NW, Suite 825
Washington, DC 20004

() Via Hand Delivery
(☒) Via Express Mail
() Via First Class Mail
() Other: